

# **Exhibit I**

## **Part 2**

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1 You're shoveling more cost onto us.  
 2 Well, you know, they get  
 3 paid. The ten dollars a mile through the  
 4 cost study process and the pricing that's  
 5 related to that will take care of that. They  
 6 don't lose money on this. They make money.  
 7 The technical stuff, the OSS  
 8 that Gemini has talked about, we're here to  
 9 take it as is. How can you argue with that?  
 10 It's like fantastic. I mean, it's a used car  
 11 off the lot, and you've got to -- I won't go  
 12 into the used car.  
 13 We had Apple versus IBM,  
 14 different platforms. No. You can use an  
 15 Apple, and I can use an Apple, and we can  
 16 e-mail back and forth, and we can do all of  
 17 this word processing. I mean, nobody is  
 18 caring what the platform is. They want to  
 19 carry traffic, and they want to, you know,  
 20 have business. So it looks okay to me.  
 21 So Gemini has a state and  
 22 federal right that the Department has clearly  
 23 identified and I think thoroughly examined  
 24 and has made work. They have a right to use  
 25 this thing as a lease and they should be able

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1 to do that.  
 2 I guess the last thing is  
 3 it's fantastic that this company is here  
 4 willing to take the risk. I'm missing -- and  
 5 again, that would be a question as part of  
 6 why don't you want to lease this thing --  
 7 where is the risk? I mean, they identified  
 8 perhaps they could get stuck with inventory  
 9 costs, but Gemini said, Well, you don't need  
 10 an inventory.  
 11 So, you know, I'm not sure I  
 12 see the risk. If there's risk that they can  
 13 identify that the Department accepts and  
 14 says, Yeah, that sounds deadly, maybe we'll  
 15 cover you on that, have a technical meeting  
 16 and maybe a letter of credit. I don't know  
 17 because I don't see it at this point. Gemini  
 18 appears to be willing to take that --  
 19 virtually all the risk to do this thing. So  
 20 I'd leave them to it and wish them luck.  
 21 That's all I have. Any  
 22 questions?  
 23 THE CHAIRPERSON: No.  
 24 MR. VALLEE: Great. Thanks.  
 25 THE CHAIRPERSON: Attorney

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1 Wright.  
 2 COMM. DOWNES: Much to the  
 3 relief of the various parties, not to mention  
 4 Commissioner Goldberg, I have an obligation  
 5 at DOT at 1:00 which I have to --  
 6 THE CHAIRPERSON: In which  
 7 case we'll have to adjourn these hearings,  
 8 which we cannot do.  
 9 COMM. DOWNES: Oh, I see.  
 10 Never mind. We'll continue on. Excuse me.  
 11 Sorry about that.  
 12 MR. WRIGHT: John Wright on  
 13 behalf of the Attorney General. Good  
 14 afternoon, Commissioners. I'll try to  
 15 accommodate you as best I can. As you know  
 16 we filed no exceptions to the Department's  
 17 draft and I intend to limit my comments  
 18 accordingly.  
 19 We think the Department should be  
 20 commended for a very thoughtful and carefully  
 21 reasoned draft decision. We think the  
 22 Department got it right and the Department  
 23 should approve this draft as its final  
 24 decision. And this is an important case  
 25 because it really represents a truly

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1 meaningful step toward providing Connecticut  
 2 consumers with competitive telecommunication  
 3 services.  
 4 The parties have articulated  
 5 differences in the draft over technical  
 6 issues, timing issues, costs, OSS, inventory,  
 7 and those are not our issues, and we're  
 8 certain the Department can handle that  
 9 appropriately without imposing any unfair  
 10 costs on any party, and we don't take a  
 11 position with respect to that.  
 12 But for the main issues in this  
 13 case, the Department correctly determined  
 14 that it had the authority under state and  
 15 federal law to unbundle these network  
 16 elements, that they were network elements,  
 17 and required the Telco to provide these on a  
 18 nondiscriminatory basis. And that is quite  
 19 simply the entire purpose and plan and intent  
 20 of the Telecommunications Act, to afford  
 21 competitors access to unbundled network  
 22 elements that they don't possess in order to  
 23 provide competitive services, services that  
 24 are competitive with the incumbent.  
 25 Mr. Moreira quite articulately and

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1 persuasively articulated many of the  
 2 arguments that have been presented to the  
 3 Department in the motion to dismiss, in the  
 4 brief, in the comments in this and in the  
 5 written exceptions, all arguments that the  
 6 Department has carefully considered and we  
 7 think properly rejected. They haven't raised  
 8 any new issues, and therefore I'm not going  
 9 to follow anything other than just to make a  
 10 few notes of comments that I heard during the  
 11 hearing.

12 The Telco brought up Title 47-USC,  
 13 Section 153 to say that the way the statute  
 14 defines a network element is inconsistent  
 15 with the Department's usage. They said it  
 16 has to be used to provide telecommunications  
 17 service.

18 Somewhere in the draft I'm sure the  
 19 Department said that this was the whole  
 20 purpose for the creation of that Personal  
 21 Vision Network, that they did intend to use  
 22 this to provide telecommunications. As  
 23 Gemini pointed out, portions of the network  
 24 are, in fact, currently being used to provide  
 25 a telecommunications service, and I think as

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1 the OCC pointed out that other cable  
 2 companies are using these same facilities to  
 3 provide telecommunication services.

4 With respect to finding that the  
 5 benefits of doing the balancing, the company  
 6 says you have to have a balancing of the  
 7 benefits of the unbundling versus the costs  
 8 that those impose, and the Telco suggested  
 9 the Department didn't do any proper balancing  
 10 analysis, and we would submit that the  
 11 Department did, and that represented a major  
 12 portion of the draft decision.

13 The Telco said that -- if I got  
 14 this correctly -- that there would be a  
 15 disincentive for future investment on the  
 16 part of companies because then they'd have to  
 17 say my failed investment, now I have to  
 18 invest time and energy and manpower to  
 19 turning that into something a competitor can  
 20 use against me, why in the world would I ever  
 21 take a step in the future to do that?

22 First of all, that's an enormously  
 23 speculative argument, but I think more  
 24 importantly the Department's analysis in the  
 25 end result was that competition was a good

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1 thing, and that's a social judgment. Even  
 2 though competition by itself does bring about  
 3 certain unpleasant results that perhaps it  
 4 could deter future investment if you think  
 5 it's too risky, sometimes it causes business  
 6 failures, sometimes it causes losses of jobs,  
 7 but we accept that as a part of competition  
 8 because we think that overall it provides  
 9 lower costs and those jobs will find more  
 10 productive areas in the economy as well.

11 That's the whole point behind  
 12 competition, that's the whole point behind  
 13 the Telecommunications Act, that we would  
 14 promote competition because of its social  
 15 benefits.

16 And I think I can limit my comments  
 17 there. If there's any questions, I'd be  
 18 happy to answer them.

19 THE CHAIRPERSON: I think  
 20 we're all set. Now, as entertaining the  
 21 first round is, the second round is the rapid  
 22 fire round because we do need to get the  
 23 Chairman on his way, so Attorney Moreira,  
 24 you're on deck.

25 MR. MOREIRA: I'm on deck and

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1 I'll be as quick as possible. The first  
 2 point I have to make is that --

3 THE CHAIRPERSON: The first  
 4 thing you can do is answer Attorney Vallee's  
 5 question, why doesn't SNET want to lease?

6 MR. MOREIRA: Well, I guess  
 7 you have to have negotiations to enter into a  
 8 lease, and we've never had them. We put an  
 9 offer out to sell it. It was not responded  
 10 to ever, and I tend to believe my general  
 11 counsel tends not to lie to me. We've never  
 12 heard a number back. I mean, if Gemini is so  
 13 keen on buying it, right, they want to use  
 14 it, if it's because we were so unreasonable,  
 15 how about putting a number on the record what  
 16 they think it's worth?

17 THE CHAIRPERSON: That's  
 18 purchasing it. What about leasing it?

19 MR. MOREIRA: Why don't they  
 20 counter with a market-based lease. That's  
 21 one of my problems with this whole decision.  
 22 I mean, should the Department be getting  
 23 involved in a business transaction and  
 24 siding, in effect, with one carrier and  
 25 saying, okay, yeah, as a matter of fact, it's

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1 not buy or lease, it's lease, and it's not  
 2 lease at market base rates, it's TSLRIC. And  
 3 read Gemini's written exceptions carefully.  
 4 I thought they were wonderful. It's  
 5 basically, Hey, you know what? Hey, thanks  
 6 for giving us this stuff, but you know what,  
 7 OSS, that costs money. Hey, thanks for doing  
 8 that, but inventory? We don't have it. You  
 9 know what? Just let us lease it a piece at a  
 10 time. We want all of it, but not all at  
 11 once.  
 12 How about having your cake and  
 13 eating it too, right? And the funny thing  
 14 is, surprise, surprise, Bill Vallee disagreed  
 15 with us. I nearly fell off my chair. I  
 16 really did.  
 17 THE CHAIRPERSON: He agreed  
 18 with me. I once fell off mine.  
 19 MR. MOREIRA: Exactly. Bill  
 20 Vallee thought the competitor was being  
 21 reasonable. Oh, my Lord, I nearly fell off  
 22 the chair. I couldn't believe it. I was  
 23 like, Oh, my God, he's disagreeing with me.  
 24 But that's neither here nor there.  
 25 So the bottom line is are we

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1 willing lease it? If the offer was right and  
 2 it was market based, sure. But they didn't  
 3 even tell us. They just said, Oh, the number  
 4 they asked for was just so high. Oh, my God,  
 5 we couldn't even respond. That's what they  
 6 said.  
 7 Would you like me to do the  
 8 rapid fire? Here goes, as rapid fire as I  
 9 can be considering it was three on one.  
 10 Number one, part of our  
 11 network, there's no evidence in it that  
 12 indicates that the co-axial facilities are a  
 13 part of our network, are connected to our  
 14 network. There is no evidence before this  
 15 Department anywhere. The Department never  
 16 even made that statement in the draft  
 17 decision.  
 18 Number two, why did George not  
 19 talk about fiber? Because it's hybrid fiber  
 20 co-ax. I didn't talk about fiber, and they  
 21 didn't talk about fiber. They mentioned  
 22 fiber, but you know what they didn't tell  
 23 you? Number one, they don't want the fiber.  
 24 That's number one. Number two, the fiber is  
 25 unbundled and available for unbundled access.

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1 So why would I talk about the fiber?  
 2 Fiber being used for Project  
 3 Pronto. I think John Andrasik made a point  
 4 that, yes, some of that fiber is being used  
 5 for transport. Some of it is being used for  
 6 Project Pronto, but Project Pronto is not a  
 7 fiber-based product for DSL. Project Pronto,  
 8 what it does, it allows our copper based  
 9 network to get closer to the customer.  
 10 So like when we had the remote  
 11 terminal example that I showed here, the CO  
 12 to remote terminal, that will be fiber and  
 13 probably has been fiber for a long time in a  
 14 lot of the remote terminals forever. We've  
 15 just put more of that, put more remote  
 16 terminals out there, so instead of central  
 17 office being in downtown, which it is, we put  
 18 a remote terminal in someone's  
 19 neighborhood, now in effect you have the  
 20 CO in the neighborhood, but the DSL is still  
 21 on copper. It's still on copper.  
 22 So if you want to -- Gemini  
 23 wants to use the fiber, you know the thing I  
 24 didn't talk about, pick up the phone, use my  
 25 OSS, I'll unbundle it for you, I'll give you

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1 a TSLRIC pricing tomorrow. They don't want  
 2 it. They want the co-ax.  
 3 Competition. I didn't raise  
 4 this argument before. This is going to bring  
 5 competition for Connecticut and the consumers  
 6 are going to win, and we're going to win,  
 7 everybody is going to win. We're just  
 8 stupid, I guess, right? We're stupid.  
 9 Now, they also didn't tell  
 10 you, you know what Gemini does, if you go  
 11 onto their web site? Gemini is a cable modem  
 12 provider. That's what they do. Ask them how  
 13 many POTS customers they have on their  
 14 existing network. I looked at their web  
 15 site. They talk about, hey, we could provide  
 16 voice, we could provide this, we could  
 17 provide that, but it's all about cable  
 18 broadband. That's why Cox is here today.  
 19 See? That's why they're here.  
 20 They're a cable broadband  
 21 provider. They only changed their tariffs  
 22 after we pointed out that to even get any of  
 23 these things that are unbundled -- let's  
 24 presume we unbundled the red stuff -- you  
 25 would have to provide a qualifying service, a

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1 POTS-like voice service to compete with us to  
2 get that. And in our context, in the TRO,  
3 right, because it's in the loop setting,  
4 let's say a carrier wins one of those loops.  
5 They could only win that loop if they're  
6 providing the underlying voice service to  
7 that customer.  
8 So if I wanted to rent a UNE  
9 and then sell Don Downes broadband only, I  
10 couldn't win that loop. If I win that loop  
11 and I provide qualifying service, which is  
12 voice, basically, whatever competes with us  
13 on a daily basis on a voice service, you  
14 could win that loop, provide the voice  
15 service. Then you could provide broadband,  
16 you could provide voice mail, you could  
17 provide long distance. Then you can pile it  
18 all on.  
19 COMM. DOWNES: I see.  
20 MR. MOREIRA: I'm curious,  
21 these great investors that Gemini are,  
22 they've got these great ideas, they're going  
23 to spend millions of dollars to upgrade this  
24 network and just turn the old little rickety  
25 house back to me, right? They don't want to

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1 spend \$300,000 on inventory. They don't have  
2 voice services in West Hartford where they  
3 exist today. The true voice service, they  
4 don't go to Mr. Smithers, who lives on Main  
5 Street in West Hartford and offer him voice  
6 services today. They've got to get E-911  
7 trunks and all of that wonderful stuff to be  
8 able to do it. And by the way, if they're  
9 thinking of doing it versus voiceover IP to  
10 compete with us, right now it's a  
11 touch-and-go issue, I recognize the Ninth  
12 Circuit, but right now voiceover IP is an  
13 information service, so that wouldn't even  
14 qualify. It wouldn't even qualify.  
15 Let me continue.  
16 THE CHAIRPERSON: That  
17 probably won't last long.  
18 MR. MOREIRA: Exactly. It  
19 wouldn't even qualify.  
20 Bifurcate. Let me move on to  
21 the bifurcation issue. They don't understand  
22 how things were bifurcated and why we thought  
23 the factual stuff, you know, perplexed, all  
24 that wonderful stuff. May I approach?  
25 THE CHAIRPERSON: Sure.

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1 You're not going to hit me, are you?  
2 MR. MOREIRA: I promise I  
3 won't. I promise. You guys didn't throw any  
4 arrows yet. There you go.  
5 On the first page it says:  
6 Telco requests that the first phase of this  
7 proceeding be directed to the legal issues of  
8 the petition, okay? So far so good. There's  
9 a lot of talk in the middle. You go to  
10 page 5, first full paragraph, it says:  
11 "Finally, the Department believes the Telco's  
12 proposal to bifurcate the instant proceeding  
13 into two phases with only the legal issues  
14 being addressed in phase one and addressing  
15 Gemini's request for a cost study and  
16 inventory in phase two to be of merit."  
17 That's why I said you went  
18 beyond your scope. I didn't really kind of  
19 just pull it out of my hat. I had that here.  
20 That's why. Just the legal issues. There  
21 are factual, I recognize when you do  
22 impairment there's a legal piece and there's  
23 a factual piece. The legal piece is okay to  
24 cover, but then you've still got a factual  
25 piece. To indicate that somehow we waived

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1 something, that makes absolutely no sense.  
2 Yeah, I waived to have a hearing on the legal  
3 issues. Why would we have a hearing to have  
4 regular witnesses talk about what they think  
5 the law is? It wouldn't make any sense. But  
6 that left the factual issues out, and that  
7 left the technical and feasibility as an  
8 issue to be discussed as a factual matter.  
9 That still exists.  
10 And if you take a look at our  
11 comments in our briefs we said, hey, we --  
12 because we talked about burden of proof and  
13 they said, hey, the burden of proof is on  
14 them. They've got to show that it's  
15 technically infeasible.  
16 I said sure I do, but we've  
17 got to do that at the next phase. I'm not  
18 going to do it today to decide the legal  
19 issues. So I didn't waive anything on  
20 technical and feasibility, especially in  
21 light of what it says here. It's what it  
22 says, not what I say.  
23 Continuing on. There was an  
24 interesting thing that was said by Attorney  
25 Janelle. She said, hey, the Fourth Circuit

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1 said capable, you know, the capability test,  
 2 is it capable. We've never said that you  
 3 can't make that capable of providing  
 4 telecommunication services. We've never said  
 5 that. Why would we say that when we have Cox  
 6 down the street providing it, you have other  
 7 people doing it all over the place? That  
 8 would be silly. What we said is the  
 9 capability test is a little more nuance than  
 10 that. That's what we said. We said the  
 11 capability test requires that it be connected  
 12 to your network and it is something that is  
 13 easily called into service, which is right in  
 14 your draft decision. That's all we've said.  
 15 And that stuff that's out there is not that.  
 16 It's not easily called into service. I can't  
 17 flip a switch. Gemini says, Oh, yeah, we can  
 18 do it real easily. They don't have the money  
 19 for a \$300,000 inventory, but they're going  
 20 to spend the \$10 million or however many  
 21 millions of dollars to put out all the  
 22 equipment in their little piece of the neck  
 23 of the woods that they're going to use. That  
 24 they're willing to spend till ad infinitum.  
 25 They're going to tell you, boy, I've got the

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1 money to burn. For \$300,000, lions, tigers  
 2 and bears won't even be able to go forward.  
 3 If that's not incredible, I don't know what  
 4 is.  
 5 And I said, you know what?  
 6 Take a good look at those written exceptions  
 7 because they imply, you know what, they've  
 8 abandoned this network. It's deteriorating.  
 9 It's falling apart. It's really worth zero.  
 10 It's worth zero. You know what? We'll pay  
 11 them something.  
 12 Bottom line, they want their  
 13 cake; they want to eat it, too; and they want  
 14 a free lunch. And that's why we haven't  
 15 leased it to them, and that's why we haven't  
 16 sold it to them, because obviously they don't  
 17 have the money, the \$300,000, to get what  
 18 they need to get. Well, maybe they should go  
 19 to their main investor and ask him for the  
 20 300,000 because I know he has it. We all  
 21 know he has it.  
 22 Business plan. I'm glad she  
 23 raised that because that was something I  
 24 wanted to give you in one of my lovely  
 25 handouts that I remember I had lost. May I

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1 approach?  
 2 THE CHAIRPERSON: You may.  
 3 COMM. DOWNES: Thank you.  
 4 MR. MOREIRA: Paragraph 115  
 5 lays it right out. You cannot do a  
 6 business-specific analysis to impairment.  
 7 Yeah, the footnote talks about Sam, but that  
 8 was making a ridiculous example to show that  
 9 we're not going to look at it in that  
 10 context. To say that somehow Gemini doesn't  
 11 compare to that because there are technology  
 12 platform differences, no, their whole  
 13 business plan, and they've argued how they  
 14 establish impairment is, hey, if we're forced  
 15 to use that platform, which is inferior, mind  
 16 you, than our wonderful cable platform, our  
 17 whole business plan will be destroyed. They  
 18 said that in the damn interrogatory response.  
 19 Our business plan will be destroyed if we  
 20 have to use it.  
 21 And that goes to our central  
 22 point in this case. If I've unbundled  
 23 everything in the blue, including the fiber  
 24 which is available, how can you establish  
 25 impairment? The only way you can do it is if

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1 you look at what I'm doing. I'm a cable  
 2 modem guy. I prefer Apple versus IBM, and by  
 3 the way, that's a legitimate distinction. I  
 4 wasn't saying that somehow that was some  
 5 horrific thing. No. They're different  
 6 platforms. They operate differently. They  
 7 just do. I was just explaining to you that  
 8 we're talking about different things. It  
 9 doesn't mean that it has any huge basis as to  
 10 the decision of what we're resting our case  
 11 on. I know Attorney Vallee implied it, but I  
 12 certainly -- you don't want to call it Apple,  
 13 don't call it Apple. If you don't want to  
 14 call it IBM, don't call it IBM. Call it  
 15 whatever you want. It doesn't matter to me.  
 16 Now, what's the problem with  
 17 the house? What's the problem with the  
 18 house? Well, I was sitting there thinking  
 19 about it when Attorney Janelle -- she did a  
 20 very, very nice job. I thought she was very  
 21 compelling. In the house analogy I said,  
 22 Well, you know what George? You better have  
 23 something good for the house analogy.  
 24 She said you've got this old,  
 25 beat up house. I'm going to show up. I'm

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1 going to pay you \$500 a month. I'm going to  
2 fix it up. I'm going to do all of these  
3 wonderful things, and at the end of the day  
4 if it doesn't work out for me, I leave, and  
5 you know what? You've got this great house.  
6 Isn't that great? Now you can rent it out  
7 for a thousand dollars a month and all of  
8 this other stuff.  
9 I said, Hey, what's wrong  
10 with that analogy? I said, Well, number one,  
11 my house isn't for rent, so how the hell did  
12 you get in there? Right? Don't I have to  
13 rent it to you first at a price that I want  
14 to get? Maybe I want a thousand a month.  
15 Maybe you're not doing me any favor. Maybe  
16 that house is on Park Avenue in New York City  
17 and it's worth 15,000 a month. Right?  
18 Maybe. As is, in the crappy state that it is  
19 supposedly, right? Maybe it is worth that.  
20 And, by God, isn't that what America is all  
21 about? What's my property is my property,  
22 right?  
23 Can I go to your house and  
24 say, Hey, Commissioner Downes, I see you've  
25 got an extra car. My wife and I, we're short

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1 one. I can go down and lease one from the  
2 car lot, the used car lot, because Attorney  
3 Vallee, boy, I would have bought something  
4 from him. He was so good. I almost bought  
5 something from him. I can go to that used  
6 car lot and pay fair market price for that  
7 used car, which is \$400 a month, or you've  
8 got three cars, you've only got two drivers,  
9 I'll take yours for 200 a month. It's a  
10 win/win. We all win. We all walk out of  
11 here dancing, holding hands. Of course not  
12 because that's what it's about, property  
13 interest.  
14 If you take one of my sticks,  
15 and that bundle, that property interest I  
16 have in the red, and for purposes of this  
17 argument let's assume you didn't have that  
18 right, aren't I injured? Isn't that wrong?  
19 That's what it's about. It's not about  
20 fixing up the house, you know? If it was  
21 about fixing up the house and we can share  
22 and everybody will be great, let's all put a  
23 little red star on our hat. That means  
24 Communism, for all of us in here.  
25 MS. JANELLE: Thanks.

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1 MR. MOREIRA: You know, let's  
2 just do that, because we're just sharing for  
3 the greater good.  
4 We've already been required  
5 to share, and we've shared enough, and that's  
6 the bottom line.  
7 And one last point before I  
8 go. Please read the written exceptions  
9 carefully because I think it's really telling  
10 as to what Gemini really wants. They want to  
11 steal this from us, and they're trying to get  
12 you to help them do it.  
13 THE CHAIRPERSON: Thank you.  
14 Attorney Janelle?  
15 COMM. DOWNES: Well, that  
16 ought to set up an exciting little rebuttal  
17 here.  
18 MS. JANELLE: Exciting but I  
19 guarantee not as animated. My boss is here.  
20 THE CHAIRPERSON: It didn't  
21 stop him. His boss is here.  
22 MS. GARBER: I should have  
23 tied his arms down.  
24 COMM. DOWNES: That's right.  
25 Please proceed.

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1 MS. JANELLE: The house is  
2 not on Park Avenue. The house is Harlem. It  
3 hasn't been lived in for ten years, and the  
4 roof is caving in. It's not worth \$50,000.  
5 And I think that the point was just  
6 completely made here. They're the ILEC, they  
7 don't want to share, not with anybody, not  
8 for anything, and certainly not at any price  
9 other than the price that they say they're  
10 going to get or you're out of business. And  
11 that is what we're talking about here.  
12 And Commissioner Downes,  
13 thankfully Congress has not said that you  
14 must rent your car to anyone. And Congress  
15 has not said that you must rent your house to  
16 anyone. But Congress has said unequivocally,  
17 and it's been tested in the courts and it has  
18 survived, that SBC must rent its network to  
19 CLECs. And I'm sorry they don't like that,  
20 but that's the way it is.  
21 We are here. We are willing  
22 to pay a fair price. And all this talk about  
23 negotiations, and we offered a price and they  
24 didn't counter, number one, we have in  
25 writing that the price was nonnegotiable.

31 (Pages 118 to 121)

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1 Number two, we sat down. We  
 2 requested to sit down and negotiate an  
 3 interconnection agreement for this UNE. The  
 4 response was. It's not for lease. And they  
 5 got up and left the table.  
 6 How do we negotiate a  
 7 market-based lease when the other party  
 8 leaves the table and says, It's not for  
 9 lease? I don't know.  
 10 As far as us changing our  
 11 business plan and changing our tariffs to  
 12 offer POTS have a statewide license to offer  
 13 POTS. We've had one for some years now. In  
 14 fact, our telephony tariffs have been on file  
 15 with the Department so long they were drafted  
 16 by Howard Slater. They were filed by Howard  
 17 Slater prior to, I believe, either  
 18 Mr. Moreira or Attorney Garber coming to SBC.  
 19 That's how long they've been there.  
 20 We are not currently  
 21 providing POTS because we haven't gained the  
 22 critical mass. We have a requirement under  
 23 Connecticut state law to utilize that license  
 24 within a certain period of time. That's why  
 25 we're here. That's what we're trying to do.

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1 So all of this talk about how  
 2 we've changed our business plan to fit some  
 3 legal loophole is absolutely incorrect, and  
 4 because SBC couldn't find our tariffs on the  
 5 Department's web site, we pointed out in our  
 6 reply brief, I believe it was, we placed the  
 7 link there, you can check them, you can see  
 8 the date that they were filed. The  
 9 Department knows when we were licensed. The  
 10 Department is well aware of our business  
 11 plans.  
 12 THE CHAIRPERSON: I miss  
 13 Howard Slater.  
 14 MS. JANELLE: I miss him  
 15 desperately.  
 16 COMM. DOWNES: Let's all sing  
 17 Kumbaya.  
 18 (Laughter.)  
 19 MS. JANELLE: As far as the  
 20 issue of the fiber, we agree the fiber is  
 21 unbundled, we agree the fiber is available in  
 22 the tariff, and that's why we haven't asked  
 23 for unbundling of it in this proceeding  
 24 because we know we can go get it. We're  
 25 asking for unbundling of the part of the

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1 network that is not unbundled. That's why we  
 2 haven't talked about fiber.  
 3 When we've mentioned fiber,  
 4 it's because SBC says, HFC, not part of our  
 5 network. You're using the fiber. It's  
 6 connected to your network. So, again,  
 7 they're trying to break it down into little  
 8 tiny pieces so they can exclude certain  
 9 portions of it and keep the portions that  
 10 they want. ILEC mentality.  
 11 The last point that I want to  
 12 make is this idea of impairment. There's a  
 13 legal piece; there's a factual piece. What I  
 14 haven't heard, what is the legal piece of  
 15 impairment? The legal piece is unbundling.  
 16 Impairment is the factual portion of  
 17 unbundling. You've got to make findings of  
 18 fact to find impairment to reach unbundling.  
 19 I don't know what the legal piece of  
 20 impairment is. I don't know what legal issue  
 21 we had to decide with respect to impairment,  
 22 and I haven't heard -- I've heard there's a  
 23 legal piece and factual piece, and I've heard  
 24 a full explanation of what the factual piece  
 25 is. I haven't heard a single explanation of

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1 the legal piece of impairment, and I'd like  
 2 you to keep that in mind.  
 3 And I'm sorry, I said that  
 4 was the last point. I lied. I have one  
 5 more.  
 6 My last point is Mr. Moreira  
 7 seems to know far more about the financial  
 8 capabilities, circumstances and the business  
 9 plans of my client than I do. However, it's  
 10 not a matter of how much the inventory costs,  
 11 \$300,000. The fact is, why should we pay for  
 12 something that they have just because they  
 13 don't want to give it to us? They have it.  
 14 It's there. It's already been paid for, paid  
 15 for, Mr. Vallee would tell you, by  
 16 ratepayers. Why should we pay for it again?  
 17 A prudent company isn't going to throw away  
 18 money. It's not going to burn its money.  
 19 It's not going to hand it out to anybody. We  
 20 have a legal right under state and federal  
 21 law to lease this network at a fair price set  
 22 by this Department, not the price that the  
 23 ILEC says we want, not because they jump up  
 24 and down and say, It's ours, it's ours, it's  
 25 ours. You can't have it.

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1 We have a legal right to  
2 lease this network. There's no taking here,  
3 which was something they mentioned in their  
4 exceptions and which has been thoroughly  
5 implied in the rebuttal comments.  
6 There are two types of  
7 takings under the law. One is a physical  
8 taking, and there's absolutely clear court  
9 rulings, and I can provide you with a cite  
10 and I will provide you with a cite if you  
11 give me one moment. Qwest versus United  
12 States 48 Federal Claims Court 672, can be  
13 found at 2001, U.S. claims, Lexis 26, dated  
14 February 20, 2001.  
15 Qwest claimed that by  
16 ordering Qwest to unbundle a portion of its  
17 network and make it available for lease at  
18 rates that the department, in the state at  
19 issue, was effecting a taking of their  
20 network, and this decision is beautiful  
21 because it lays out the law, the history of  
22 the Telcom Act, everything, and says clearly  
23 and unequivocally that a forced lease of  
24 Telco property pursuant to the Telcom Act is  
25 not a taking, is not a physical taking.

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1 Let's get to part number two  
2 of takings, regulatory taking. This same  
3 case has a thorough description of a  
4 regulatory taking. One cite gets you  
5 everything you need.  
6 A regulatory taking is a  
7 confiscatory rate. There's no regulatory  
8 taking here. Why? Because the rate hasn't  
9 been set. It's not ripe. How do they know  
10 if it's confiscatory taking? We haven't set  
11 the rate yet. That's to come in the later  
12 phase. No taking. Just a use of the  
13 existing law to unbundle the network and make  
14 it available to competitors. And, again, I  
15 believe Mr. Vallee's question is right on  
16 point. Why don't they want to lease it? Why  
17 don't they want some revenue as opposed to no  
18 revenue? All we've heard is because we don't  
19 want to. The reason underlying we don't want  
20 to, we don't want competition. They're going  
21 to steal customers from us. And we certainly  
22 believe that we can and hopefully we will.  
23 And we think you're right on point, and  
24 that's all I have to say.  
25 THE CHAIRPERSON: You were

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1 more animated than you said you would be.  
2 MS. JANELLE: I'm sorry?  
3 THE CHAIRPERSON: You were  
4 more animated than you said.  
5 COMM. DOWNES: Attorney  
6 Vallee.  
7 MS. JANELLE: Was that good  
8 or bad?  
9 THE CHAIRPERSON: That was  
10 good.  
11 MR. VALLEE: Yes,  
12 Commissioner, very quickly.  
13 Both of you essentially asked  
14 SNET why they won't lease, and the quote I  
15 have is they won't lease it because Gemini  
16 doesn't have the money, which is not exactly  
17 the answer I expected to hear, and then defer  
18 you to this mysterious owner who is so  
19 wealthy and just should spend all their  
20 money. I'm not sure about that. I hope that  
21 SNET doesn't feel that way about ratepayers.  
22 There's no bottomless pit there, the  
23 Department well knows. And certainly nothing  
24 personal. I'm amazed that Mr. Moreira would  
25 say, Well, Bill Vallee disagrees with me, how

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1 surprising.  
2 I don't think that that's  
3 exactly something that happens all the time.  
4 I suppose their theme song is "Why Is  
5 Everybody Always Picking On Me"?  
6 COMM. DOWNES: Oh, God.  
7 MR. VALLEE: Because it isn't  
8 personal. It really is that consumers  
9 disagree with what SNET is doing. I'm not  
10 here as myself, I'm here as the Office of  
11 Consumer Counsel.  
12 THE CHAIRPERSON: Nobody  
13 believes it to be personal.  
14 MR. VALLEE: No, I  
15 understand.  
16 MR. MOREIRA: I didn't think  
17 it was personal.  
18 MR. VALLEE: No, I know that.  
19 COMM. DOWNES: We're going to  
20 need Dr. Joyce Brothers on this panel before  
21 long here.  
22 MR. VALLEE: Maybe that would  
23 be handy. She could be sitting over there.  
24 But there are two sides to most of  
25 the issues that appear before the Department.

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1 You have to choose one side or the other, and  
 2 the fact that the OCC is on the consumer side  
 3 is obvious, but we're very much in favor of  
 4 competition, and there are various reasons  
 5 why SNET might not be. That's perfectly  
 6 understandable.

7 HFC not part of our network,  
 8 and as Ms. Janelle just pointed out, the  
 9 fiber is part of the network. It was the "F"  
 10 in the HFC. And whether it goes -- whether  
 11 the red goes all the way to your phone, which  
 12 was the example, first of all, it does go  
 13 much closer to the home, that's the idea. It  
 14 does go to the remote terminal, and many of  
 15 the RBOCs, Bell South in particular, and I  
 16 would assume SBC is following quite closely,  
 17 and as has been mentioned in the TRO, there  
 18 is fiber to the curb, fiber to the home, it  
 19 is closing in. And Project Pronto is clearly  
 20 headed in that direction. Whether it is  
 21 there today or not I don't think is the  
 22 issue.

23 As for impairment and whether  
 24 the Department improperly used Gemini's  
 25 business plan, which I don't believe the

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1 Department -- I don't think the draft  
 2 decision does that. It certainly doesn't  
 3 rely on that. SNET, I don't want to say  
 4 contrary, it's not contrary, they're  
 5 essentially saying, no, you can't use their  
 6 business plan; you should use ours. We  
 7 didn't intend it. That was a trial. The  
 8 HFC, that's not part of our  
 9 telecommunications service and therefore  
 10 unbundled. No, that's not what we intended.  
 11 That's not what we wanted. So use our plan.

12 No. I think the draft  
 13 decision got it right.

14 As for the inventory cost and  
 15 whether or not owners can spend \$300,000 to  
 16 do it or not, again, they're saying we'll  
 17 take it as is. The inventory that was  
 18 conducted May 20, '01 is satisfactory. I  
 19 point out that SNET was just in here a few  
 20 weeks ago bally-hooing in this very room its  
 21 inventory control for poles and attachments  
 22 and where is the pole today? So it doesn't  
 23 ring right there's no inventory in this  
 24 business.

25 That's all I have. Thanks a

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1 lot.

2 THE CHAIRPERSON: Thank you.  
 3 Attorney Wright.

4 MR. WRIGHT: Extremely brief.  
 5 I want to make a comment about the taking.  
 6 This is not about taking, and this is not  
 7 about seizure. This is a network that's  
 8 required to be unbundled by federal law.  
 9 Rates are to be set by the DPUC, they'll be  
 10 fair rates, and there's an entire judicial  
 11 process that the company can avail themselves  
 12 to to assure fairness down the road. And  
 13 therefore we just think that's a red herring.  
 14 Thank you.

15 THE CHAIRPERSON: Thank you.  
 16 Thank you all. Thank you all for these oral  
 17 arguments. I haven't had such a good time  
 18 since Tom Benedict was on the bench, Kathleen  
 19 Kerry was general counsel. Thank you all.  
 20 We'll take these under advisement.

21 COMM. DOWNES: Thank you.  
 22 (Whereupon, the above  
 23 proceedings were adjourned at 1:15 o'clock  
 24 p.m.)  
 25

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1 CERTIFICATE  
 2 I hereby certify that the foregoing 132  
 3 pages are a complete and accurate  
 4 computer-aided transcription of my original  
 5 stenotype notes taken of the Oral Argument in  
 6 Re: DOCKET NO. 03-01-02 PETITION OF GEMINI  
 7 NETWORKS CONNECTICUT, INCORPORATED FOR  
 8 DECLARATORY RULING REGARDING SOUTHERN NEW  
 9 ENGLAND TELEPHONE COMPANY'S UNBUNDLED NETWORK  
 10 ELEMENT, which was held before The Hon. JACK  
 11 GOLDBERG, Chairperson, and the Hon. DONALD W.  
 12 DOWNES, Commissioner, at the Department of  
 13 Public Utility Control, 10 Franklin Square,  
 14 New Britain, Connecticut, on December 10,  
 15 2003.

16  
 17  
 18  
 19 Sharon L. Masse, R.M.R.,  
 20 L.S.R.  
 21 Court Reporter  
 22 UNITED REPORTERS, LLC  
 23 111 Gillett Street  
 24 Hartford, Connecticut 06105  
 25

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